IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 484 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAKRAI SHAMJIBHAI SINGALA - Applicant(s)
Versus
VRAJLAL AMRATLAL POPAT - Opponent(s)

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Appearance :
MR MEHUL S SHAH for Applicant(s) : 1,MR SURESH M SHAH for Applicant(s) : 1,
PARTY-IN-PERSON for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 29/03/2006

ORAL JUDGMENT

1. The petitioner has approached this Court to challenge order passed below application Exh. 5 in

Regular Civil Appeal No. 59 of 2000 dated 30th November, 2000 by the Ld. 3rd Extra Assistant Judge, Rajkot, whereby the Ld. Judge even while admitting the appeal filed by the petitioner against the judgment and decree of eviction made by the Ld. Judge, Small Causes Court, Rajkot, dated 31st July, 2000 in Regular Civil Suit No. 19 of 1993, has dismissed the application at Exh. 5 wherein the prayer for stay of the execution of the decree till the disposal of the said appeal is prayed for.

2. Heard Mr. Mehul Shah, learned advocate for the petitioner and respondent – party-in-person. Mr. Shah has also drawn my attention to para. 6 of the impugned order wherein the Ld. Judge has drawn conclusion that the judgment and decree passed by the trial Court are perfectly in consonance with the facts and circumstances and position of law. He has, therefore, submitted that even before hearing and deciding the main appeal, the Ld. Judge has passed the final order. The application has been opposed by the party-in-person.

3. Having heard the party-in-person i.e. respondent – Vrajlal Amratlal Popat and Mr. Mehul S Shah, learned advocate appearing for the petitioner and having perused the record of this revision application, it clearly appears that when the appeal has been admitted by the Ld. Judge, it is necessary to give adequate protection against the execution of the decree of eviction by the Appellate Court. The nature or order passed below application Exh. 5 shows that it would be deciding the appeal against the appellant before it is finally heard. In view of the same, this Revision Application deserves to be allowed. Hence, the impugned order stated above is quashed and set aside. The judgment and decree under challenge before the Appellate Court, namely, 3rd Extra Assistant Judge, Rajkot in Regular Civil Appeal No. 59 of 2000 are stayed till final disposal of the said appeal. The Appellate Court is directed to hear and dispose of the appeal on or before 15th May, 2006. The office is directed to return the record and proceedings of the case forthwith to the lower

Appellate Court.

Rule made absolute with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.